



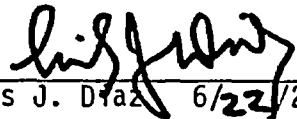
COMMISSIONER

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

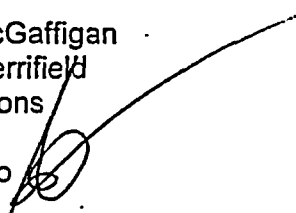
May 18, 2005

U01G6BJ-03-0001

Disapproved. See attached
comments.


Nils J. Diaz 6/22/2005

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons

FROM: Gregory B. Jaczko 

SUBJECT: IMPROVING TRANSPARENCY IN THE 10 CFR §20.2002 PROCESS

Recently the agency has received a great deal of attention from a variety of external stakeholders regarding the NRC process for addressing requests under 10 CFR § 20.2002. Upon consideration of this increased attention, I believe that in the future the NRC staff should publish in the *Federal Register* and seek public comment on any draft finding of no significant impact (FONSI) rendered pursuant to a 10 CFR § 20.2002 request.

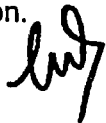
A section 20.2002 request, if approved, permits an NRC licensee to dispose of material generated at its licensed facility in a manner not otherwise provided for in our regulations. The present frustration surrounding these requests appears to be the result of a lack of public understanding and involvement on these issues. I believe publishing a draft FONSI rendered pursuant to a 10 CFR § 20.2002 request would allow the public to better educate themselves on these issues and would provide a process for their participation. Thus, this would serve to increase both communication with external stakeholders and transparency in the agency's processes.

Many of the staff's reviews conducted to assess applicant's requests filed with the NRC do provide for some level of public participation - either through the agency's adjudicatory process or, most commonly, through the agency's implementation of the National Environmental Policy Act (NEPA). The agency's current process for reviewing 10 CFR § 20.2002 requests does not always allow for these avenues of public involvement. Under NRC regulations, the environmental impacts of 10 CFR § 20.2002 requests are analyzed by the staff in an environmental assessment. After analyzing the proposal, if the staff determines that there is not a significant environmental impact as a result of the proposed action, the staff is required to publish a *Federal Register* notice announcing the availability of the final environmental assessment along with a finding of no significant impact (FONSI). Prior to this publication, the staff seeks only limited comments from a select group of stakeholders including the directly affected states. The NRC's regulations do not require that a draft version of the environmental assessment and FONSI be published for general public comment. The regulations do, however, recognize that it may be desirable in some instances to do so, for example, when doing so would further the purposes of NEPA. See 10 CFR § 51.33(b)(2).

**Chairman Diaz's Comments on COMGBJ-05-0001, Improving Transparency
in the 10 CFR 20.2002 Process**

Commissioner Jaczko raises a number of thought-provoking issues that apply not only to the 10 CFR 20.2002 exemption process, but also across the range of NRC's regulatory activities. Throughout my tenure on the Commission, the NRC has striven to increase both communication with external stakeholders and transparency in agency processes to improve public understanding of how the agency fulfills its responsibilities. Clearly, Commissioner Jaczko is focusing attention on one area in which we can do better. At the same time, I share the concerns expressed by Commissioners McGaffigan and Merrifield regarding the potential for adverse impact on our well-established regulatory framework that could result from implementation of the approach offered by Commissioner Jaczko. I believe it is possible to develop other approaches to improve the transparency of the 10 CFR 20.2002 exemption process. For example, the staff could consider encouraging additional stakeholder input by maintaining an NRC web-page with an easily accessible, current listing of 20.2002 requests with information or links related to the NEPA reviews.

In summary, I disapprove the proposal offered by Commissioner Jaczko in COMGBJ-05-0001 as currently written. The staff, working with OGC, should examine this issue, develop options to enhance public understanding and awareness of 10 CFR 20.2002 exemptions, and provide recommendations to the Commission within 120 days of the issuance of the SRM for this action.

A handwritten signature in black ink, appearing to be 'LWJ', is located below the text of the summary.



COMMISSIONER

REQUEST REPLY BY: 6/2

COMGBJ-05-0001

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

May 18, 2005

Disapproval
See attached
comment

Elle Joffe Jr.
6/8/05

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons

FROM: Gregory B. Jaczko

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Commissioner McGaffigan's Comments on COMGBJ-05-0001

I concur with the comments of Commissioner Merrifield and disapprove of the proposal to publish in the Federal Register, and provide for public comments on, findings of no significant impact (FONSI) prepared in response to questions under 10 CFR §20.2002. I fully support NEPA's goals of making sure actions with significant potential environmental actions receive a full analyses and the opportunity for public comment and review before actions are taken. However, the NEPA process itself specifically contemplates that there will be actions for which a full public notice and comment process is not necessary.

There is a vast difference between public "participation" in a process prior to a decision and the "transparency" of the process. Our FONSI findings in this regard are very transparent. Absent a demonstration of meaningful benefit to the decision-making process itself, I am not convinced that it is an appropriate use of our limited resources to expand the formalities surrounding this particular process.

EMG



COMMISSIONER

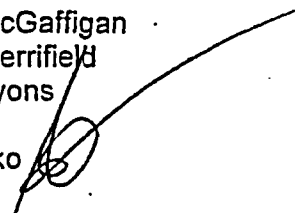
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UNITED STATES
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COMGBJ-05-0001

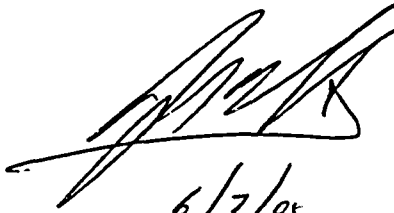
May 18, 2005

See attached
Comments.

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons

FROM: Gregory B. Jaczko 

SUBJECT: IMPROVING TRANSPARENCY IN THE 10 CFR §20.2002 PROCESS


6/7/05

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Commissioner Merrifield's Comments on COMGBJ-05-0001

Although I appreciate Commissioner Jaczko's desire to provide additional opportunities for stakeholder input on 10 CFR 20.2002 requests, I cannot support this proposal. Requiring publication of draft findings of no significant impact (FONSI) in support of staff decisions to approve these requests would unnecessarily complicate the Agency's review process. First, I believe that the staff already puts significant time and effort into soliciting input on 20.2002 requests from affected states. Second, it would introduce a considerable amount of additional work for the staff at a time when Agency resources are already spread thin. Third, it would also result in a substantial increase in the time necessary for the staff to make its decision on a request. And finally, this would set a precedent with regard to publication of all other exemption and code relief requests. I see no way to distinguish 20.2002 exemption requests from the many others we receive on a regular basis, and could not justify publication of a select few of this broad category of Agency actions.

Having said this, the staff should at all times make educated decisions on requested exemptions and should encourage stakeholder input by individuals who may be directly affected by an NRC decision to approve a request pursuant to 10 CFR 20.2002.



6/7/05



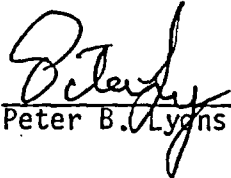
UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

May 18, 2005

COMMISSIONER

Approved with attached
comments.

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons


Peter B. Lyons 6/17/05
6/17/2005

FROM: Gregory B. Jaczko 

SUBJECT: IMPROVING TRANSPARENCY IN THE 10 CFR §20.2002 PROCESS

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Commissioner Lyons Comments on COMGBJ-05-0001

I support Commissioner Jaczko's proposal on a trial basis. The staff should on an interim basis publish in the *Federal Register* and seek public comments on any draft finding of no significant impact (FONSI) rendered pursuant to 10 CFR 20.2002. I am supporting the proposal because it will provide more opportunities to interested stakeholders to participate in the agency's regulatory process.

However, I am also concerned with the issues raised by both Commissioners Merrifield and McGaffigan that the proposal might stress NRC's limited resources in this area and might result in less timely decision making. Commissioner Merrifield also stated that Commissioner Jackzo's proposal would set precedent with regard to publication of other requests and that there is no way to distinguish 10 CFR 20.2002 requests from others.

I feel, however, that since 10 CFR 20.2002 decisions may result in contamination of property with radioactive materials that may not have been previously contaminated, there are special reasons to enhance public participation opportunities. Therefore, I recommend that after processing 5 requests under 10 CFR 20.2002, staff should provide the Commission with a paper analyzing the resource impact, the impact on the timeliness of the decision making and the level and breadth of comments received from interested stakeholders.

I also would like to encourage staff to continue their ongoing process to develop guidance that would memorialize the 10 CFR 20.2002 process, which I believe would make the process more transparent.

OL
6/17/05

Given the amount of attention the recent 10 CFR §20.2002 requests have received, I believe that the agency is presented with an opportunity to find an effective means by which interested stakeholders could participate in the process and thus, become better informed about the nature of these requests. I believe NEPA provides us with just such a process tool. In fact, one of NEPA's primary objectives is to ensure that agency decisionmakers take environmental factors into account when making decisions regarding proposed actions. NEPA accomplishes this goal in a variety of ways, one of which is through ensuring that comments on environmental actions are received and appropriately considered by decisionmakers before rendering a final decision on the proposed action. By publishing the draft FONSI associated with a 10 CFR § 20.2002 request, the staff could respond to substantive comments on these requests and facilitate meaningful discussion in a well-defined process. Given the recent attention and apparent misunderstanding of these requests, the 10 CFR § 20.2002 requests appear to me to be a perfect example of when utilizing the discretionary authority provided by NRC regulations to publish a draft FONSI for comment would precisely serve the stated purpose of NEPA and at the same time provide a simple yet effective way for those with interests in this area to meaningfully participate in the process.

SECY, please track.

cc: OGC
EDO